**IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL**

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2) (b)

Description of Case

W.P. No. 84 (S/S) of 2001

Date of decision :- 25-9-2006

~~**A.F.R. (Approved for Reporting)**~~

Not approved for reporting

Date :- 25-9-2006 Initials of Judge

**Note:-** Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

**HIGH COURT OF UTTARANCHAL, AT NAINITAL**

**Civil Misc. Writ Petition No. 84 (S/S) of 2001**

Sri Dharam Dev
S/o Late Sri Vifa,
Resident of J Block Beni,
P.O. Nagla Pantnagar,
District – Udham Singh Nagar .....Petitioner

**Versus**

Vice Chancellor, G.B. Pant University of Agriculture
& Technology, Pantnagar,
District-Udham Singh Nagar and 2 others ...Respondents

Mr. Manoj Tiwari, learned counsel for the petitioner.
Sri Rajendra Dobhal, learned counsel for the respondents.

**Per Hon'ble J.C.S. Rawat, J.**

1. By means of this Writ Petition, moved under Article 226 of the Constitution of India, the petitioner has sought the following relieves:-

> "i) To issue a writ order or direction in the nature of mandamus commanding the Respondents to consider and appoint the Petitioner in the University in accordance with the provisions contained in the statute of the University.
>
> ii) To issue a writ order or direction in the nature of mandamus commanding the Respondents to forthwith pay the entire dues of the father of the Petitioner including family pension to the Petitioner and his family.
>
> iii) To issue any other suitable writ order or direction as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.
>
> iv) To award costs of this writ petition to the petitioner."

2. The petitioner is seeking mandamus to appoint him in the University on compassionate ground in place of his father who died in harness on 19.08.2000. It was further pleaded that the services of the father of the petitioner was regularized on 1st July, 1988 and thereafter his father has been continuously working in the University. The elder

brother and mother of the petitioner have also consented for providing an appointment under the Dying in Harness Rule. When the respondents did not provide the appointment under the Dying in Harness Rule, the petitioner has filed this writ petition before this court.

3. The respondents had filed a counter affidavit in which it has been alleged that the mother of the petitioner Smt. Sukhiya had been working in the University in regular capacity since 01.07.1988 and she is still in service. It has wrongly been stated in the petition that the petitioner is maintaining the family of the deceased. The respondents further pleaded that Chapter 13 of the conditions for considering the cases of dependents of deceased employees have been provided that the appointment under the Dying in Harness Rule will be provided only those dependents of the employee who have put in three years service in the University and if there is no other earning member of the family of the deceased. The perusal of the said rule clearly emphasize that the case of the petitioner is not covered under the provisions of the statutes because at the time of the death of the father of the petitioner, the mother of the petitioner Smt. Sukhia had been serving in the University. Thus the petitioner is not entitled for any employment in view of the statutes of Chapter 13 which provides as under:

> *"The above facility will be given to only the dependents of the employees who have put in atleast 3 years continuous service in the University and only if there is no other earning member in the family of the deceased."*

4. Thus the petitioner is not entitled for any appointment under the Dying in Harness Rule.

5. The petitioner has also claimed the relief for seeking the post retrial benefit. The petitioner is not pressing this relief No. 2 at this stage. It is also pertinent to mention here that this petition has been filed by the son. The mother and elder brother had been arrayed as party in this petition. The relief No. 2 cannot be granted in this case. In view of the above proposition, the petitioner has sought the permission to file a proper petition.

6. In view of the foregoing discussion, the writ petition devoids of merit is liable to be dismissed and is dismissed accordingly. The parties shall bear their own costs.

7. All applications pending in this case are stand disposed of in terms of the judgment.

**(J.C.S.Rawat, J.)**

25th September, 2006
Shiv